



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Darren A. Janzig; Carl D. Wahlstrand; Robert M. Skime; Mark S. Lent; Keith A. Miesel; James E. Cabak	Confirmation No.	3259
Serial No.:	10/731,699		
Filed:	December 9, 2003	Customer No.:	28863
Examiner:	Dana D. Greene		
Group Art Unit:	3762		
Docket No.:	1023-331US01		
Title:	COUPLING MODULE OF A MODULAR IMPLANTABLE MEDICAL DEVICE		

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicant respectfully requests a Pre-Appeal Brief Request for Review in the above-referenced application. In the Final Office Action mailed December 15, 2005, the Examiner rejected: claims 1, 3, 7, 8, 11, 12 and 14-25 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,399,820 to Wirtzfeld et al. (Wirtzfeld); claims 4 and 9-10 under 35 U.S.C. § 103(a) as being unpatentable over Wirtzfeld in view of U.S. Patent No. 6,490,486 to Bradley (Bradley); claim 6 under 35 U.S.C. § 103(a) as being unpatentable over Wirtzfeld in view of U.S. Patent No. 6,176,879 to Reischl et al. (Reischl); and claim 13 under 35 U.S.C. § 103(a) as being unpatentable over Wirtzfeld in view of U.S. Patent No. 5,776,169 to Schroepfel. (Schroepfel).

Applicant respectfully traverses the rejections, as the cited references neither anticipate under 35 U.S.C. § 102(b), nor render obvious under 35 U.S.C. § 103(a), the subject matter in any of pending claims 1, 3-15 and 17-25. For example, the Examiner rejected each of the independent claims under 35 U.S.C. § 102(b) as being anticipated by Wirtzfeld; however,

Wirtzfeld fails to teach or suggest elements in each of the independent claims. With respect to independent claim 1, Wirtzfeld fails to disclose or suggest an overmold that at least partially encapsulates each of at least two housings and a coupling module. With respect to independent claim 7, Wirtzfeld fails to disclose or suggest a coupling module fixedly coupled to first and second housings, wherein the coupling module is made of a metal that defines at least one lumen between the first and second housings. Additionally, with respect to independent claim 25, Wirtzfeld fails to disclose or suggest a coupling module that is hermetically fixed to at least one of first and second housings. In fact, Wirtzfeld fails to even mention hermeticity, much less teach the subject matter of claim 25. These deficiencies in the cited prior art and others are outlined in greater detail below.

I. Rejections of Claims 1, 3, 4, 6 and 24

Wirtzfeld fails to disclose or suggest an overmold that at least partially encapsulates each of at least two housings and a coupling module, as required by Applicant's independent claim 1. In the Final Office Action, the Examiner cited col. 4, ll. 64-68 of Wirtzfeld as disclosing this requirement. However, the cited portion of Wirtzfeld describes a transparent protective jacket 39, which surrounds only the body of the measuring probe M.

Wirtzfeld does not describe or depict the jacket 39 as at least partially encapsulating each of at least two housings, as required by independent claim 1. The Examiner argued that the heart pacemaker HS and the measuring probe M are the at least two modules with respective housings required by claim 1. Even if this position were tenable, Wirtzfeld does not suggest any physical relationship between the jacket surrounding the measuring probe and the housing of the heart pacemaker, much less that the jacket at least partially encapsulates the housing of the pacemaker. Wirtzfeld depicts and describes the jacket only as part of the intracardiac measuring probe, which is located a significant distance from the extracardiac pacemaker.¹ Therefore, it is unclear how the jacket could possibly be considered an overmold that at least partially encapsulates each of at least two housings and a coupling module.

Accordingly, Wirtzfeld fails to disclose each and every feature of independent claim 1, as required for anticipation under section 102. Further, neither Wirtzfeld, nor any of the other

¹ See Wirtzfeld, FIGS. 1 and 3.

applied references, provides any teaching that would have suggested modification to include the above-identified feature of claim 1. For at least these reasons, Applicant respectfully requests that the rejections of claims 1 and 3-6 be withdrawn.

II. Rejections of Claims 7-15 and 17-23

Wirtzfeld fails to disclose or suggest a coupling module fixedly coupled to first and second housings, wherein the coupling module is made of a metal that defines at least one lumen between the first and second housings, as required by independent claim 7. With respect to independent claim 7, the Examiner argued that the stimulation catheter K disclosed by Wirtzfeld is a coupling module that defines a lumen between housings. However, Wirtzfeld does not teach or suggest that the catheter is made of metal that defines at least one lumen between first and second housings, as required by independent claim 7. Accordingly, the catheter disclosed by Wirtzfeld is not a coupling module within the meaning of claim 7.

The Examiner also argued that col. 4, ll. 30-40 of Wirtzfeld discloses a coupling module made of metal. However, the cited passage of Wirtzfeld discusses a metallic annular element 31. As clearly depicted in FIGS. 2-5 of Wirtzfeld, the metallic annular element is an internal component of the measuring probe M described by Wirtzfeld.

Accordingly, Wirtzfeld does not disclose or suggest that the annular element is fixedly coupled to first and second housings, as required by claim 7. Further, Wirtzfeld does not disclose or suggest that the annular element defines a lumen between first and second housings, as required by claim 7. The Examiner argued that the heart pacemaker HS and the measuring probe M are the two modules with respective housings required by claim 7. Wirtzfeld does not even suggest any physical relationship between the annular element and the heart pacemaker, much less that the annular element is fixedly coupled to the housing of the pacemaker, and defines a lumen between the pacemaker housing and measuring probe, as would be required by the Examiner's analysis.

Accordingly, Wirtzfeld fails to disclose each and every feature of independent claim 7, as required for anticipation under section 102. Further, neither Wirtzfeld, nor any of the other applied references, provides any teaching that would have suggested modification to include the

above-identified feature of claim 7. For at least these reasons, Applicant respectfully requests that the rejections of claims 7-13 and 17-23 be withdrawn.

III. Rejection of Claim 25

Wirtzfeld fails to disclose or suggest a coupling module that is hermetically fixed to at least one of first and second housings, as required by independent claim 25. As stated in the previous Amendment, Wirtzfeld does not discuss hermeticity at all, much less teach or suggest this requirement of claim 25. The Examiner has not addressed this limitation in any of the Office Actions, despite Applicant's requests that the Examiner do so.

As stated above, and in the previous Amendment, Wirtzfeld does not discuss hermeticity at all, much less teach or suggest a coupling module that is hermetically fixed to at least one of first and second housings, as required by independent claim 25. Further the Examiner has not even attempted to identify any teaching in Wirtzfeld as disclosing or suggesting this limitation prior to finally rejecting the claim. The Examiner's final rejection of claim 25, without any explanation responsive to Applicant's arguments in the prior Amendment, is clearly contrary to the requirements of 37 C.F.R. § 1.104 and the Administrative Procedure Act. On this basis alone, the final rejection is improper, and should be withdrawn.

Wirtzfeld fails to disclose each and every limitation of independent claim 25. Further, neither Wirtzfeld, nor any of the other applied references, provides any teaching that would have suggested modification to include the above-identified limitation of claim 25. For at least these reasons, Applicant respectfully requests that the rejection of claim 25 be withdrawn.

IV. Conclusion

Applicant requests a review and a panel decision that promptly resolves the issues in Applicant's favor and eliminates the need for an Appellate Brief. For at least the reasons set forth above, all rejections should be reversed.

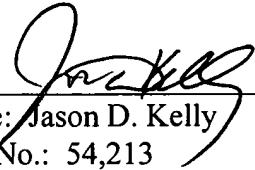
By setting forth the clear grounds of error, Applicant does not assert that these are the only errors in the record, nor does Applicant waive any arguments that may be asserted in an Appeal Brief.

Please charge any additional fees or credit any overpayment to deposit account number 50-1778.

Date:

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